

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

16 Cr. 338 (PKC)

6 THOMAS C. DAVIS,

7 Defendant.
-----x

8 New York, N.Y.
9 May 16, 2016
10 11:20 a.m.

12 Before:

13 HON. P. KEVIN CASTEL,

14 APPEARANCES
15 PREET BHARARA
16 United States Attorney for the
17 Southern District of New York
BROOKE CUCINELLA
DANIEL S. GOLDMAN
Assistant United States Attorneys

18 LATHAM & WATKINS
19 Attorneys for Defendant
CHRISTOPHER J. CLARK
20 BENJAMIN A. NAFTALIS
-and-
21 FISH & RICHARDSON
THOMAS M. MELSHEIMER

1 (Case called)

2 MS. CUCINELLA: Brook Cucinella and Daniel Goldman on
3 behalf of the government. Good morning, your Honor.

4 MR. CLARK: Good morning, your Honor, Chris Clark,
5 Latham & Watkins, for the defendant, Mr. Davis. With me is my
6 partner, Ben Naftalis, and cocounsel, Tom Melsheimer from Fish
7 & Richardson from Dallas.

8 THE COURT: Good to see you all.

9 This is the defendant's first appearance, is that
10 correct?

11 MS. CUCINELLA: That is correct, your Honor.

12 THE COURT: Mr. Davis, let me begin by informing you
13 of certain rights that you have. You have the right to be
14 informed of the charges against you, to consider whether
15 counsel should be appointed, whether you should be released
16 while awaiting trial or if you happen to plead guilty awaiting
17 sentencing.

18 You have the right to remain silent and are not
19 required to make any statements. Anything that you do say can
20 be used against you. Even if you have made any statements to
21 the authorities, you need not make further statements. Do you
22 understand these rights?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And you have the right to be represented
25 by counsel during this court proceeding and any future court

1 proceedings and any time you are questioned by authorities. If
2 you cannot afford an attorney, I will appoint one to represent
3 you. Do you understand these rights?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I understand you have retained counsel, is
6 that correct?

7 THE DEFENDANT: Yes, sir, I have.

8 THE COURT: Now, in this case I understand that you
9 have waived indictment and have agreed to allow the government
10 to proceed on an information signed by a prosecutor, is that
11 correct?

12 THE DEFENDANT: Yes, sir, it is.

13 THE COURT: You have certain alternatives. For
14 example, instead of waiving indictment, you would be eligible
15 to have a hearing on whether the government has probable cause
16 to arrest you or hold you as answerable on these charges. Do
17 you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: And by waiving indictment you are giving
20 up those rights. You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, before I accept any sort of a guilty
23 plea from you I must satisfy myself that you understand the
24 rights you would have if this case went to trial and the rights
25 that you are giving up by pleading guilty. Also that you

1 understand the consequences of pleading guilty and there is a
2 factual basis for your plea of guilty.

3 So in a moment I am going to have the clerk place you
4 under oath and I am going to ask you certain questions and
5 inform you of certain rights. If I ask you something or I tell
6 you something and you don't quite understand, I'll put it into
7 different words.

8 Also, if at any point today you wish to speak in
9 private with your lawyers, I'll give you the opportunity to do
10 that as well. Do you understand all of that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And is it in fact your desire to waive
13 indictment and enter guilty pleas to 12 counts of an
14 information?

15 THE DEFENDANT: Yes, sir, it is.

16 THE COURT: I am going to ask the court deputy to
17 administer the oath.

18 (Defendant sworn)

19 THE COURT: Mr. Davis, you are now under oath and your
20 answers to my questions are subject to the penalties of perjury
21 or of making a false statement if you do not answer truthfully,
22 and also any statements you make today may be used in any such
23 prosecution. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: How old are you, sir?

1 THE DEFENDANT: Sixty-seven.

2 THE COURT: How far did you go in school?

3 THE DEFENDANT: I finished graduate school.

4 THE COURT: What degree in graduate school?

5 THE DEFENDANT: I got a master's in business
6 administration.

7 THE COURT: Are you now or have you recently been
8 under the care of a medical doctor?

9 THE DEFENDANT: I am not currently now.

10 THE COURT: Have you ever been treated for a mental
11 illness?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you ever been addicted to any
14 substance, alcohol, marijuana, prescription medications,
15 cocaine, heroin, anything?

16 THE DEFENDANT: No, sir.

17 THE COURT: How do you feel today?

18 THE DEFENDANT: I feel just fine.

19 THE COURT: Is your mind clear?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Counsel have any doubts as to the
22 defendant's competence to plead?

23 MR. CLARK: I do not, your Honor.

24 THE COURT: Based upon Mr. Davis' responses to my
25 questions and my observations of his demeanor, I find that he

1 is fully competent to enter an informed plea. I will ask the
2 clerk to place before Mr. Davis his signed waiver of
3 indictment.

4 Did you in fact sign the waiver of indictment,
5 Mr. Davis?

6 THE DEFENDANT: Yes, sir, I did.

7 THE COURT: Do you understand that you had the right
8 to have evidence underlying the charges presented to a grand
9 jury of 23 people and have those people decide by a majority
10 vote whether you should be charged or not?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: Do you understand that by signing the
13 waiver of indictment you give up that right and permit the
14 government to file the charges solely on the signature of the
15 United States Attorney?

16 THE DEFENDANT: Yes, sir, I understand.

17 THE COURT: Did you read the waiver before you signed
18 it?

19 THE DEFENDANT: Yes, I did.

20 THE COURT: Did you discuss it with your lawyer before
21 you signed it?

22 THE DEFENDANT: Yes, I did.

23 THE COURT: Did you understand it before you signed
24 it?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: I find that the waiver of indictment is
2 knowing and voluntary and it is accepted.

3 Can counsel confirm that defendant has received the
4 15-page sealed information in this case?

5 MR. CLARK: He has. He has reviewed it and we waive
6 its public reading, your Honor.

7 THE COURT: Public reading is waived.

8 Let me ask you, Mr. Davis, have you in fact discussed
9 the charges contained in the sealed information, the 12 counts,
10 with your lawyers?

11 THE DEFENDANT: Yes, sir, I have.

12 THE COURT: Have you had enough time to consider all
13 of your options in this case?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: Are you satisfied with your lawyer's
16 representation of you?

17 THE DEFENDANT: Yes, sir, I am.

18 THE COURT: I am now going to explain to you the
19 rights that you would have if this case went to trial and the
20 rights that you are giving up by pleading guilty.

21 Under the Constitution and laws of the United States,
22 you are entitled to a speedy and public trial on the charges
23 contained in the information. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: If there were a trial, you would not have

1 to prove that you were innocent. The government would be
2 required to prove each element of each crime by proof beyond a
3 reasonable doubt. Before you could be found guilty, a jury of
4 12 people would have to agree unanimously that you were guilty.
5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: If there were a trial, at every stage of
8 your case you would be entitled to be represented by a lawyer;
9 and if you could not afford a lawyer, one would be appointed at
10 public expense. Do you understand all that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If there were a trial, the witnesses for
13 the government would have to come to court to testify. You
14 would be able to see and hear them. Your lawyer would have the
15 right to question them through cross-examination. Your lawyer
16 would have the right to object to evidence offered by the
17 government. Your lawyer could present evidence and could ask
18 the Court to compel witnesses to appear at trial on your
19 behalf. Do you understand all that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: If there were a trial, you would have the
22 right to testify if you chose to do so. You could come up here
23 and take the witness stand. Also, you would have the right not
24 to testify and no one would be permitted to draw any inference
25 or suggestion of guilt from the fact that you decided not to

1 testify. Do you understand all that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: If there were a trial and the jury found
4 you guilty, you would have the right to appeal that finding.

5 Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Now, those are the rights you would have
8 if you proceeded to trial. If you choose to enter a plea of
9 guilty and I accept that plea of guilty, there will be no
10 trial. You will proceed to the sentencing phase in which the
11 Court will determine the punishment to be imposed on you. Even
12 now you have the right to change your mind and instead of
13 pleading guilty you may plead not guilty and go to trial.

14 Do you wish to plead not guilty and go to trial?

15 THE DEFENDANT: No, sir.

16 THE COURT: I am going to go through a brief
17 description of the charges and the sentence which is the
18 maximum sentence you are exposed to for the charges. This
19 information is set forth in the plea agreement which we will
20 discuss this morning.

21 Count One charges you with conspiracy to commit
22 securities fraud by reason of your agreement to participate in
23 a scheme to commit insider trading relating to the securities
24 of Dean Foods Company and Darden Restaurants, Inc., from in or
25 about 2008 through in or about 2014. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: This charge, Count One, carries a maximum
3 term of five years' imprisonment, a maximum term of supervised
4 release of three years, a maximum fine of the greatest of
5 \$250,000, twice the gross pecuniary gain derived from the
6 offense or twice the gross pecuniary loss to persons other than
7 yourself resulting from the offense, and a \$100 mandatory
8 special assessment. You understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Count Two charges you with conspiracy to
11 commit wire fraud by reason of your agreement to participate in
12 the scheme to commit wire fraud from in or about 2008 through
13 in or about 2014. This charge carries a maximum term of 20
14 years' imprisonment, a maximum term of three years' supervised
15 release, a maximum fine of the greatest of \$250,000, twice the
16 gross pecuniary gain derived from the offense or twice the
17 gross pecuniary loss to persons other than yourself resulting
18 from the offense, and a mandatory \$100 special assessment. Do
19 you understand all of that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Counts Three, Four, Five, and Six each
22 charges you with securities fraud, in violation of federal
23 statutes and regulations for your participation in insider
24 trading relating to the securities of Dean Foods in or about
25 May 2012, July 2012, and September 2012. Do you understand

1 that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And Count Six charges you with securities
4 fraud for participating in insider trading relating to the
5 securities of Darden in or about August 2013. Do you
6 understand all that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And each of these counts, Counts Three,
9 Four, Five, and Six, carries a maximum term of imprisonment of
10 20 years, a maximum term of supervised release of three years,
11 a maximum fine of the greatest of \$5 million, twice the gross
12 pecuniary gain derived from the offense, or twice the gross
13 pecuniary loss to persons other than yourself resulting from
14 the offense, and a mandatory \$100 special assessment. Do you
15 understand all that?

16 THE DEFENDANT: Yes.

17 THE COURT: Counts Seven, Eight, Nine, and Ten charge
18 you with wire fraud for your participation in a scheme to
19 commit wire fraud in or about May 2012, July 2012, September
20 2012, and in or about August 2013. Each of these counts,
21 Seven, Eight, Nine, and Ten, carries a maximum term of
22 imprisonment of 20 years, a maximum term of supervised release
23 of three years, a maximum fine of the greatest of \$250,000,
24 twice the gross pecuniary gain derived from the offense or
25 twice the pecuniary loss to persons other than yourself

1 resulting from the offense, and a \$100 mandatory special
2 assessment. Do you understand all that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Count Eleven charges you with committing
5 obstruction of justice in or about May and June 2014. Count
6 Eleven carries a maximum term of 20 years' imprisonment, a
7 maximum term of three years' supervised release, a maximum fine
8 of the greatest of \$250,000, twice the gross pecuniary gain
9 derived from the offense or twice the gross pecuniary loss to
10 persons other than yourself resulting from the offense, and a
11 \$100 mandatory special assessment. Do you understand all that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Count Twelve charges you with the crime of
14 perjury, for making false statements under oath in May 2015 in
15 a deposition or examination taken by the United States
16 Securities and Exchange Commission. Do you understand that's
17 what you are charged with?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Count Twelve carries a maximum term of
20 five years' imprisonment, a maximum term of three years'
21 supervised release, a maximum fine of the greatest of \$250,000,
22 twice the gross pecuniary gain derived from the offense or
23 twice the gross pecuniary loss to persons other than yourself
24 resulting from the offense, and a \$100 mandatory special
25 assessment. Do you understand all that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Now, with respect to supervised release,
3 you should be aware that there are terms and conditions
4 attached to it. And if you do not live up to those terms and
5 conditions, you can be returned to prison for the full period
6 of supervised release. So say at the time of sentencing you
7 receive a prison term to be followed by a period of, for
8 example, three years' supervised release and you live up to the
9 terms of supervised release for two years but then you violate
10 one of the terms and conditions. You can be returned to prison
11 for a full period of three years. That's the way supervised
12 release works. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you a United States citizen?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: By pleading guilty you give up valuable
17 civil rights, such as the right to vote, to hold public office,
18 to sit on a jury, to possess a firearm, to hold other licenses
19 or to obtain certain government benefits. Do you understand
20 all that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: As part of your sentence the Court must
23 require that you make financial restitution to any person who I
24 find was injured by reason of your criminal conduct. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Let me inquire of counsel. Is the
3 defendant prepared to admit the forfeiture allegations in
4 paragraphs 27 and 28 of the information?

5 MR. CLARK: He is, your Honor.

6 THE COURT: Are you, Mr. Davis, serving any other
7 sentence, state or federal, or being prosecuted in any court
8 for any crime?

9 THE DEFENDANT: No, sir.

10 THE COURT: In sentencing you I will receive a
11 presentence report prepared by the office of probation that
12 gives me background information and a recommended range of
13 sentence under the sentencing guidelines. After hearing from
14 your lawyer and from the government, I'll make my own
15 determination of the correct guideline range that applies in
16 your case. Even after determining the correct guideline range,
17 I need not follow it and can sentence you all the way up to the
18 statutory maximum. The guidelines are advisory, they are not
19 binding on the Court, and they are only one of the factors that
20 the Court takes into account in deciding the appropriate
21 sentence. Do you understand all that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And the sentence is determined under a
24 statute which is commonly known as Section 3553(a). Do you
25 understand that?

1 THE DEFENDANT: Yes, sir, I do.

2 THE COURT: The guidelines are just one of the 3553(a)
3 factors. Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: You will only be permitted to appeal or
6 collaterally attack the sentence I impose on the basis that the
7 sentence is unreasonable or contrary to law. Do you understand
8 that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: I understand you've entered into a plea
11 agreement with the government, is that correct?

12 THE DEFENDANT: Yes, sir, I have.

13 THE COURT: And I have before me a six-page letter
14 agreement bearing the letterhead of the Department of Justice
15 and on the cover page the date May 11, 2016. I'll ask the
16 clerk to place that document in front of you. Take a look at
17 it and tell me if that's your plea agreement with the
18 government.

19 THE DEFENDANT: Yes, sir, it is.

20 THE COURT: Is that your signature on the last page?

21 THE DEFENDANT: It is.

22 THE COURT: Did you read it before you signed it?

23 THE DEFENDANT: Yes, sir, I did.

24 THE COURT: Did you discuss it with your lawyers
25 before you signed it?

1 THE DEFENDANT: I have, yes, sir.

2 THE COURT: Did you understand it before you signed
3 it?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Has anyone threatened you or forced you in
6 any way to enter into the plea agreement or to plead guilty?

7 THE DEFENDANT: No, they have not.

8 THE COURT: Has anyone given you anything of value or
9 promised you anything in order to get you to enter into the
10 plea agreement or to plead guilty?

11 THE DEFENDANT: No, sir.

12 THE COURT: Does the plea agreement contain all of
13 your understandings with the government?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I want you to know that any prediction,
16 calculation, or estimate that anyone has made to you, including
17 your own lawyers, as to what sentence I might give you is not
18 binding on me, not binding on the Court, and if it turns out to
19 be wrong you will not be permitted to withdraw your guilty
20 plea. Do you understand all of that?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: One of the provisions of your plea
23 agreement is you have agreed to provide substantial assistance
24 and truthful cooperation to the government, including
25 testifying if asked to do so. Is that correct?

1 THE DEFENDANT: Yes, sir, it is.

2 THE COURT: It is up to the government, not up to me,
3 to decide whether your cooperation and assistance to be
4 substantial enough for the Court to ask that I take it into
5 account in sentencing. I cannot second-guess that decision.
6 But if they do ask me to take account of substantial
7 assistance, it is up to me to decide whether to grant their
8 request. And if I do take account of substantial assistance it
9 is up to me to decide how much weight or consideration to give
10 to it. Do you understand all that?

11 THE DEFENDANT: Yes, sir, I do.

12 THE COURT: If the government declines to make such a
13 motion or request, or if they do but I decline to accept their
14 recommendation or grant their motion, you will not be permitted
15 to withdraw or plea of guilty. Do you understand that?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: Let me inquire of the government, what are
18 the elements of the crimes charged and what in summary would be
19 the government's evidence on the 12 counts if this case were to
20 go to trial?

21 MS. CUCINELLA: Your Honor, if this case were to go to
22 trial the government would prove beyond a reasonable doubt the
23 following: With respect to Count One, that the defendant
24 agreed with at least one other person to commit the defined
25 object, here securities fraud. I will go through those

1 elements when I go through the substantive offenses. Second,
2 that at least one overt act was taken by the defendant or a
3 coconspirator to further the conspiracy; and, third, at least
4 one overt act in furtherance of the conspiracy took place in
5 the Southern District of New York.

6 With respect to the substantive offense and the
7 defined object of Count One, the government would prove that
8 the defendant disclosed material nonpublic information, that
9 the defendant provided the information in breach of a duty to
10 keep the information confidential and was acting for a personal
11 benefit; third, that the defendant knew the information was
12 disclosed in breach of a duty and for personal benefit; fourth,
13 that the defendant caused another to trade based on the
14 material nonpublic information he disclosed; and, fifth, that
15 at least one act in furtherance of the scheme took place in the
16 Southern District of New York.

17 With respect to Count Two, conspiracy to commit wire
18 fraud, the government would prove beyond a reasonable doubt
19 that the defendant agreed with at least one other person to
20 commit the substantive offense of wire fraud, the elements of
21 which I'll go through in a moment; second, that the defendant
22 knowingly and willfully participated in the conspiracy; and,
23 third, at least one act in furtherance of the conspiracy
24 occurred in the Southern District of New York.

25 With respect to Counts Seven through Ten and the

1 elements or the substantive offense of wire fraud, the
2 government would prove: First, that there was either a scheme
3 or artifice to defraud or a scheme or artifice to obtain money
4 or property by false and fraudulent pretenses, representations,
5 or promises; second, that the defendant knowingly and willfully
6 participated in the scheme or artifice with knowledge of its
7 fraudulent nature and with specific intent to defraud or that
8 the defendant knowingly and intentionally aided and abetted
9 others in the scheme; third, that in executing the scheme to
10 defraud the defendant used or caused the use of interstate
11 wires.

12 With respect to Count Eleven, the defendant is charged
13 with two provisions of that statute. With respect to the
14 first, the government would prove beyond a reasonable doubt:
15 First, that the defendant altered, destroyed, mutilated or
16 concealed or attempted to alter, destroy, mutilate or conceal a
17 record, document, or other object; second that the defendant
18 did so with the intent to impair the object's integrity or
19 availability for use in official proceeding; and, third, that
20 the defendant did so corruptly.

21 With respect to the second provision of that statute,
22 the government would show: First, that there was a pending
23 official proceeding; second, that the defendant had knowledge
24 of the pending proceeding; and, third, that the defendant
25 obstructed, influenced, or impeded or attempted to obstruct,

1 influence or impede the official proceeding; and, fourth, that
2 the defendant did so corruptly.

3 Finally, with respect to Count Twelve, the perjury
4 count, the government would show: First, that the defendant
5 testified or subscribed any written testimony, declaration,
6 deposition, or certificate; second, that the defendant did so
7 having taken an oath or under penalty of perjury; third, that
8 the testimony, declaration, deposition, or certificate was
9 false; fourth, that the false testimony, declaration,
10 deposition, or certificate was material; and, fifth, that the
11 defendant knew that the testimony, declaration, deposition, or
12 certificate was false, that is, it did not result from
13 confusion or mistake, but was intended to deceive.

14 The government would make this showing through, among
15 other things, trading records, phone records, witness
16 testimony, documents provided by various entities and e-mails
17 collected by grand jury subpoenas.

18 THE COURT: Mr. Davis, please tell me in your own
19 words what you did that leads you to believe that you are
20 guilty of the 12 crimes charged in the information.

21 You can remain seated, sir.

22 THE DEFENDANT: Your Honor, from about 2008 to 2013 in
23 Dallas, Texas, and elsewhere in the United States, I provided
24 material nonpublic information related to Dean Foods to Billy
25 Walters. I did so knowing that I had a fiduciary duty in my

1 role as a director and as the chairman of the board of
2 directors of Dean Foods to maintain confidentiality about such
3 information. Dean Foods is publicly traded on the New York
4 Stock Exchange in New York, New York. When I began providing
5 this material nonpublic information to Billy Walters, I
6 expected that I would receive personal benefits in the form of
7 business opportunities and a potential source of capital from
8 Billy Walters and his associates in exchange providing said
9 information. Among other things, I expected to receive a loan
10 in the amount of \$625,000, which I did not fully repay, and a
11 line of credit in the amount of \$400,000, which I drew down
12 approximately \$350,000 and did not fully repay. I spoke to
13 Billy Walters and these associates with these personal benefits
14 prior to and during my providing material nonpublic information
15 to Billy Walters. I provided Billy Walters with material
16 nonpublic information about Dean Foods on several occasions,
17 including in or about May 2012, June 2012, August 2012, and
18 September 2012. I did so using means and instruments of
19 interstate commerce, including telephone calls, text messages,
20 and e-mails with Walters and others.

21 In or around August 2013, I received public nonpublic
22 information about Darden Restaurants, Inc. from representatives
23 of Barrington Capital, L.P., pursuant to a nondisclosure
24 agreement with Barrington Capital.

25 Thereafter, I disclosed material nonpublic information

1 about Darden that I learned from Barrington to Billy Walters.
2 I did so in violation of my duty to keep the information I
3 obtained confidential. I received personal benefits from both
4 Billy Walters and his associates, including the loans I just
5 described. Billy Walters was aware that I had received
6 personal benefits, from both him and his associates, in
7 exchange for this disclosure of material nonpublic information.
8 Again, I provided Billy Walters this information using means
9 and instrumentals of interstate commerce, including telephone
10 calls, text messages, and e-mails with Walters and others.

11 On or about May 18, 2015, in New York, New York, I was
12 deposed by the Securities and Exchange Commission. I
13 understood that I was under oath and obligated to testify
14 truthfully. However, at this deposition I knowingly and
15 intentionally made false statements to the SEC. For example, I
16 falsely stated that I had not provided Billy Walters with
17 material nonpublic information. This statement was false and I
18 knew that it was false at the time I made it.

19 On or about May 28, 2014, I was visited at my home in
20 Dallas, Texas by the Federal Bureau of Investigation. I
21 understood that I was obligated by law to speak truthfully to
22 the FBI. However, I unknowingly and intentionally made false
23 statements in response to their questions. For example, I told
24 the federal agents that I had not provided Billy Walters with
25 material, nonpublic information about Dean Foods. This

1 statement was false, and I knew that it was false at the time
2 that I made it.

3 In or around May or June 2014, after the FBI visited
4 my home, I knowingly destroyed the prepaid cellular phone that
5 Billy Walters had previously provided me with and in order to
6 covertly provide Billy Walters with material, nonpublic
7 information described above. Specifically I attempted to
8 dispose of the cellular phone by throwing it into a creek near
9 my home in Dallas. I did so with the intent both to impair the
10 integrity of the cellular phone and to make it unavailable for
11 any subsequent criminal proceeding.

12 THE COURT: Did you know what you were doing was wrong
13 and unlawful?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Does the government agree there is a
16 sufficient factual predicate for a plea of guilty to each of
17 the 12 counts?

18 MS. CUCINELLA: We do, your Honor.

19 THE COURT: Let me hear your proffer on venue.

20 MS. CUCINELLA: Your Honor, for Counts One through
21 Ten, Mr. Walters made trades on the New York Stock Exchange and
22 he used a broker located in New York, New York. With respect
23 to Counts Eleven and Twelve, the official proceeding that was
24 impeded or instructed or attempted to be impeded or obstructed
25 by Mr. Davis was located or was centered in the Southern

1 District of New York.

2 THE COURT: Does defense counsel have any basis to
3 challenge the government's venue proffer?

4 MR. CLARK: We do not, your Honor.

5 THE COURT: Does defense counsel agree there is a
6 sufficient factual predicate?

7 MR. CLARK: We do as to Counts One through Twelve,
8 your Honor.

9 THE COURT: Are you aware of any valid defense that
10 would likely prevail at trial or any reason why your Client
11 should not be permitted to plead guilty?

12 MR. CLARK: We are not aware.

13 THE COURT: Mr. Davis, do you have any questions for
14 me?

15 THE DEFENDANT: No, sir, I do not.

16 THE COURT: With respect to Count One, how do you
17 plead, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Count Two, guilty or not guilty?

20 THE DEFENDANT: Guilty.

21 THE COURT: Count Three, guilty or not guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: Count Four, guilty or not guilty?

24 THE DEFENDANT: Guilty.

25 THE COURT: Count Five, guilty or not guilty?

1 THE DEFENDANT: Guilty.

2 THE COURT: Count Six, guilty or not guilty?

3 THE DEFENDANT: Guilty.

4 THE COURT: Count Seven, guilty or not guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: Count Eight, guilty or not guilty?

7 THE DEFENDANT: Guilty.

8 THE COURT: Count Nine, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: Count Ten, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Count Eleven, guilty or not guilty?

13 THE DEFENDANT: Guilty.

14 THE COURT: Count Twelve, guilty or not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: With regard to the forfeiture allegations
17 in paragraphs 27 and 28 of the information, do you admit those
18 allegations or do you deny those allegations?

19 THE DEFENDANT: Yes, I admit, your Honor.

20 THE COURT: Based upon your responses to my questions
21 and my observations of your demeanor, I find that you know your
22 rights, you know the consequences of pleading guilty, and there
23 is a factual basis for your plea of guilty. Your plea of
24 guilty and admission to the forfeiture allegations are
25 accepted. Further, I find that your plea agreement was

1 knowingly and voluntarily entered into.

2 I am going to order a presentence investigation and
3 report and direct that no interview of you take place unless
4 your counsel is present. It's important that you be honest,
5 candid, and truthful with the people who prepare the
6 presentence report, tell them the good things and the even
7 not-so-good things because the report will be important in my
8 decision on sentencing. Before the day of sentencing you'll
9 have an opportunity to review that report. I urge you to
10 review it carefully. If there are any mistakes, point them out
11 to your lawyer so that he can point them out to me.

12 Sentencing in this case is set for November 18, 2016,
13 at 10 a.m.

14 I'll hear the government with regard to bail.

15 MS. CUCINELLA: Your Honor, the parties have a
16 proposed package for your Honor's consideration. Specifically,
17 we propose a \$500,000 personal recognizance bond with the
18 defendant released on his own signature today but signed by two
19 financially responsible cosigners within two weeks, regular
20 pretrial supervision, that the defendant surrender his passport
21 and make no new applications, and travel restricted to the
22 continental United States.

23 THE COURT: Any objection to that proposed bail
24 package?

25 MR. CLARK: Not from the defense, your Honor.

1 THE COURT: I am going to approve it. The government
2 has another application, is that correct?

3 MS. CUCINELLA: That's correct, your Honor. We have
4 submitted papers on this as well, but we would like to ask that
5 the proceedings from today be sealed and that there be delayed
6 docketing until the government makes a further application to
7 have it unsealed.

8 THE COURT: But that would have a temporal limitation
9 of six months from the date of the order.

10 MS. CUCINELLA: Understood, your Honor.

11 THE COURT: Any objection to that from the defendant?

12 MR. CLARK: We join in that application, your Honor.

13 THE COURT: That order is signed.

14 Anything further from the government?

15 MS. CUCINELLA: No, your Honor.

16 THE COURT: Sealing of the transcript, I assume.

17 MS. CUCINELLA: Yes, your Honor.

18 THE COURT: Without objection, that is granted.

19 Anything further from the defendant?

20 MR. CLARK: No, your Honor. Thanks for your
21 consideration.

22 THE COURT: Thank you.

23 ○○○
24
25